

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND HARRY B. BRAUNGARDT

Come now Harry B. Braungardt ("Licensee") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a real estate broker will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Commission at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the documents relied upon by the Commission in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Commission believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that Licensee's license, numbered 1999108344, is subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, Harry B. Braungardt, holds an active broker license from the Commission, license number 1999108344. The Commission issued Licensee's broker license on October 31, 2000. Licensee's license expires June 30, 2020. Licensee's license was current and active at all times relevant herein.

3. On or about January 4, 2017, the Commission conducted an audit of Licensee's sole proprietorship and identified 12 violations of the Missouri Real Estate Commission statutes and regulations. On or about April 12, 2017, the Commission sent Licensee a letter requesting information on how he intended to correct the audit violations and come into compliance. Between April 12, 2017 and January 8, 2018, the Commission and Licensee exchanged correspondence regarding the corrections but Licensee never fully corrected the audit violations. The audit violations were:

- a. In violation of section 339.105.1, RSMo, and 20 CSR 2250-8.120(4), there was a temporary shortage in the sales escrow account in three instances due to earnest money not being held where specified: \$500 from September 12, 2016 to September 30, 2016; \$1,000 from August 17, 2016 to November 18, 2016; and \$500 from August 12, 2016 to November 28, 2016.
- b. In violation of sections 339.750.1 and 339.780.4, RSMo, Licensee acted as a dual agent without written authorization from the buyer or seller on two instances.
- c. In violation of section 339.780.2, RSMo, Licensee acted as an agent of the seller without obtaining a written agency agreement on three instances.
- d. In violation of section 339.780.3, RSMo, Licensee acted as an agent of the buyer without obtaining a written agency agreement on five occasions.
- e. In violation of regulations 20 CSR 2250-4.030(1) and 2250-8.010(2), Licensee's business sign did not bear the name under which Licensee is licensed and a copy of the fictitious name registration was not furnished to the Commission.

- f. In violation of regulation 20 CSR 2250-8.010(1), Licensee's office was not open during usual business hours and business hours were not posted.
- g. In violation of regulation 20 CSR 2250-8.096(1), Licensee made an incorrect disclosure in that Licensee disclosed as a designated agent for the seller and the buyer.
- h. In violation of regulation 20 CSR 2250-8.096(1)(A)2, the written brokerage relationship disclosure did not include the source or sources of compensation on two instances.
- i. In violation of regulation 20 CSR 2250-8.100(1), earnest money was not held where specified on three instances.
- j. In violation of regulation 20 CSR 2250-8.100(1), all terms and conditions were not specified in the offer to purchase on two instances.
- k. In violation of regulation 20 CSR 2250-8.100(3), there was a change on the contract not initiated by the sellers or buyers.
- l. In violation of regulations 20 CSR 2250-8.150(3) and 2250-8.160(1), Licensee failed to retain a copy of the closing statement on five instances.

4. On or about March 7, 2018, the Commission sent Licensee a second letter stating that the Commission received no response to the January 8, 2018 letter and putting Licensee on notice that Licensee had 30 days to respond pursuant to regulation 20 CSR 2250-8.170 or that the matter would be referred for discipline of Licensee's license. The Commission received no response to its March 7, 2018 letter.

5. Section 339.105, RSMo, states, in relevant part:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

6. Section 339.750.1 states:

1. A licensee may act as a dual agent only with the consent of all parties to the transaction. Consent shall be presumed by a written agreement pursuant to section 339.780.

7. Section 339.780, RSMo, states, in relevant part:

...

2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.
3. Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation.
4. Before engaging in any acts enumerated in section 339.010, a designated broker intending to act as a dual agent shall enter into a written agreement with the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The agreement shall include a licensee's duties and responsibilities specified in section 339.750 and the terms of compensation.

8. Regulation 20 CSR 2250-4.030 states:

- (1) Any broker doing business under any name other than the broker's legal name or any entity doing business under any name other than the name registered with the secretary of state, shall first comply with the provisions of sections 417.200-417.230 on the registration of fictitious names and shall furnish the commission a copy of the registration within ten (10) days of receipt of the official registration from the secretary of state.

9. Regulation 20 CSR 2250-8.010 states:

- (1) Every resident broker, except those who have placed their licenses on inactive status or those not actively engaged in the real estate business, shall maintain a regularly established place of business in this state, which shall be open to the public during usual business hours or at regular stated intervals;
- (2) A broker's business sign of sufficient size to identify it and bearing the name under which the broker or the broker's firm is licensed, or the regular business name, shall be displayed outside of the broker's regular place of business.

10. Regulation 20 CSR 2250-8.096 states, in relevant part:

- (1) Licensees acting with or without a written agreement for brokerage services pursuant to sections 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each

party to the real estate transaction on or before such party's first signature to the real estate contract. Nothing contained herein prohibits the written confirmation of brokerage relationships from being included or incorporated into the real estate contract, provided that any addendum or incorporated document containing the written confirmation must include a separate signature section for acknowledging the written confirmation that shall be signed and dated by each party to the real estate transaction.

(A) Written confirmation must –

2. Identify the source or sources of compensation;

11. Regulation 20 CSR 2250-8.100 states, in relevant part:

(1) Every licensee shall make certain that all of the terms and conditions authorized by the principal in a transaction are specified and included in an offer to sell or buy and shall not offer the property on any other terms. Every written offer shall contain the legal description or property address, or both, and city where the property is located, or in the absence of, a clear description unmistakably identifying the property.

(3) Any change to a contract shall be initialed by all the buyers and sellers. Acceptance of each fully executed contract shall include the date at which final agreement was reached either by 1) specific acknowledgement of final acceptance date; or 2) date of the last signature or initial to the contract.

12. Regulation 20 CSR 2250-8.120(4) states:

Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. Commissions payable must be removed from the escrow account at the time the transaction is completed. After the transaction is completed, interest payable shall be disbursed to the appropriate party(ies) from the escrow account no later than ten (10) banking days following the receipt of the next statement of the escrow account. When the licensee receives all interest earned, interest payable to a licensee must be removed from the escrow account within ten (10) banking days following the receipt of the next statement of the escrow account.

13. Regulation 20 CSR 2250-8.150(3) states:

The brokers for the buyer and the seller shall retain legible copies of both buyer's and seller's signed closing statements.

14. Regulation 20 CSR 2250-8.160(1) states:

Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

15. Regulation 20 CSR 2250-8.170(1) states:

Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

16. Licensee's conduct, as described in paragraphs 3 through 4 above, specifically, Licensee's repeated failure to respond within 30 days of written request and failure to correct the audit violations, as detailed in paragraph 3 above, constitutes cause to discipline Licensee's license pursuant to § 339.100.2(15) and (19), RSMo.

17. Cause exists for the Commission to take disciplinary action against Licensee's license under § 339.100.2(15) and (19), RSMo, which states in pertinent part:

(2) The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct or gross negligence[.]

Joint Agreed Disciplinary Order

18. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

19. The terms of discipline shall include that Licensee's licenses shall be placed on probation for a period of two (2) years. Licensee's licenses are hereby placed on two (2) years' probation. During the period of probation on Licensee's licenses, Licensee shall be entitled to practice as a real estate broker associate provided Licensee adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

27. Terms and conditions of the disciplinary period. Terms and conditions of the disciplinary period are as follows:

Specific Terms:

- a. All earnest money shall be given to a title company, escrow agent or attorney within ten business days of entering into a contract.
- b. Licensee shall act only as a seller's agent in transactions where he has an ownership interest in any property.
- c. The Commission will conduct a re-audit one year after the settlement agreement is effective.

General Terms:

- a. Licensee shall keep the MREC apprised at all times in writing of Licensee's current addresses and telephone numbers at each place of residence and business. Licensee shall notify the MREC in writing within ten days of any change in this information.
- b. Licensee shall timely renew Licensee's licenses, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain Licensee's licenses in a current and active state. Licensee shall not apply for any additional real estate licenses, transfer to another broker, or change the status of the current licenses without the prior written permission of the Commission. During the disciplinary period, Licensee shall not place Licensee's licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Licensee may surrender Licensee's real estate licenses by

submitting a Surrender of Licensure Rights form to the MREC along with the original license and any duplicate copies issued to Licensee. If Licensee applies for a real estate license after surrender, Licensee shall be required to requalify as if an original applicant. Licensee would have to apply as an original applicant for a salesperson license. The MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

c. Licensee shall meet in person with the MREC or its representative at any such time and place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

d. Licensee shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

e. During the probationary period, Licensee shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.

f. Licensee shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

g. Licensee shall report to the MREC each occurrence of Licensee's being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

20. This Agreement does not bind the Commission or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Agreement that are either now known to the Commission or may be discovered.

21. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

22. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

23. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

24. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

25. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

26. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of Licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:

Administrative Hearing Commission, P.O. Box 1557, United States Post Office Building, 131 West High St, Jefferson City, MO 65102.

27. If Licensee has requested review, Licensee and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing

Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensee as allowed by law. If the Licensee does not submit the agreement to the Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEE



Harry B. Braungardt

Date 8/19/19

COMMISSION



Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date 08-27-19